

REMARKS/ARGUMENTS

Applicant previously filed an Amendment and Response to the Final Action on May 22, 2009, based on an interview conducted with the Examiner and the agreement reached therein. A summary of the interview as drafted by the Examiner and forwarded on May 13, 2009, is attached hereto. In the May 22, 2009, claims 1-77 were pending in the application of which claims 1, 14, 26, and 51 were independent claims. Claims 1-25 were previously withdrawn. Claims 32-35, 41, 42, 58-62, 67, and 68 were cancelled. Claims 26, 28, 36-39, 43, 45, 47, 51-53, 63-65, 69, 71, and 75-77 were amended. In particular, Applicant attempted to amend claims 26 and 51 in accordance with the agreement detailed in the Interview Summary of May 13, 2009.

In an Advisory Action dated June 15, 2009, the amendments were not entered, and the Action indicted that the limitations added to claims 26 and 51 raised new issues requiring further search, consideration, or both. Applicant subsequently filed a notice of Appeal in order to maintain the patent application. Applicant has now further amended claim 26 based on the telephonic interview conducted with the Examiner on January 6, 2010, and in accordance with 37 CFR §41.33(a) and §1.116(b). Applicant believes that the amendments introduce no new matter and are fully supported by the original disclosure. Accordingly, claims 26-31, 36-40, 43-57, 63-66, and 69-77 are still pending of which claims 26 and 51 are independent claims.

Examiner Interview:

Applicant would like to thank the Examiner for participating in a telephonic interview with Applicant's representative, the undersigned, on January 6, 2010. During the Interview, Applicant's representative requested clarification on why the amendments

that were submitted on May 22, 2009, were not admitted and were indicated to raise new issues of patentability. The Examiner explained that while he felt claims 51 and 77 were fine as amended; claim 26 appeared to have incorporated broader language than was included in original claim 77.

Claim Amendments:

Accordingly, in addition to the previous amendments of claims 51 and 77, Applicant has further amended claim 26 above to more closely follow the language of claim 77. In addition, several claims were cancelled to remove potentially redundant claims. This necessitated the amendment of several other claims, e.g., to update claim dependencies and to keep the claims consistent. Applicant believes that these amendments do not introduce new matter and are fully supported by the original specification. Further, Applicant believes that these amendments relate to the form of the claims and not the substance or scope of the claims.

An Appeal Brief has not been file in this case. Under 37 CFR §41.33(a): “Amendments filed after the date of filing an appeal pursuant to §41.31(a)(1) through (a)(3) and prior to the date a brief is filed pursuant to §41.37 may be admitted as provided in §1.116 of this title.” 37 CFR §1.116(b) states:

After a final rejection or other final action in an application . . . :

- (1) An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action;
- (2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted; or

(3) An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

With respect to claim 26, the above amendment is necessary as it will lead to allowance of the claim as indicated in the attached Interview Summary and obviate the need for an appeal. The further amendments to claim 26 included above were not previously presented, because Applicant believed that claim 26 had been amended based on the agreement reached in the May 13, 2009, interview. The interview describes the agreement as follows: “[a]n agreement was reached in terms of amending claims 26, 51 to reflect the claim limitations of dependent claim 77.” Based on the content of the interview, Applicant did not understand the agreement to require verbatim inclusion of the claim limitations of claim 77 as indicated by the Examiner in the telephonic interview of January 6, 2010. While Applicant does not agree that verbatim inclusion is necessary, Applicant would have filed the above amendments in order to gain allowance of claim 26 and the claims that depend therefrom had Applicant understood this to be the Examiner’s view of the agreement.

As noted above, the remaining amendments either cancel claims or amend certain claims in order to maintain consistency with the remaining claims. Accordingly, Applicant believes that the filing of the amendments is proper and can and should be admitted under 37 CFR §41.33(a) and 37 CFR §1.116(b).

Claim Rejections Under 35 U.S.C. 103:

Paragraph 5 of the Action rejects claims 26, 28-30, 32-34, 41-43, 49-51, 56-60, 67-69, 75, and 76 under 35 U.S.C. 103(a) as being unpatentable over Anderson et al.

(U.S. Patent No. 7,240,062) in view of Syeda-Mahmood (U.S. Patent No. 5,953,451). Applicant has cancelled claims 32-34, 41-42, 58-60, 67, and 68 thereby rendering the rejection moot as to these claims. Applicant therefore respectfully requests withdrawal of the rejection of claims 32-34, 41-42, 58-60, 67, and 68; however, Applicant expressly reserves the right to pursue any patentable subject matter included in claims 32-34, 41-42, 58-60, 67, and 68 at a later time.

With respect to the remaining claims, claims 26 and 51 have been amended in accordance with the agreement reached with the Examiner. Accordingly, Applicant submits that the claims as amended overcome the art of record. Claims 28-30, 43, 49-50, 56, 57, 69, 75, and 76 ultimately depend from claims 26 and 51 and are therefore allowable for at least the same reasons. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 26, 28-30, 43, 49-51, 56, 57, 69, 75, and 76.

Paragraph 6 of the Action rejects claims 27, 31, 52, and 54 under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Syeda-Mahmood in further view of Loudon et al. (U.S. Patent No. 6,556,712). Claims 27, 31, 52, and 54 ultimately depend from claims 26 and 51 and are therefore allowable for at least the same reasons. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 27, 31, 52, and 54.

Paragraph 7 of the Action rejects claims 35-40, 44-48, 61-66, 70-74, and 77 under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Syeda-Mahmood in further view of Krtolica (U.S. Patent No. 5,719,959). Applicant has cancelled claim 35 thereby rendering the rejection moot as to this claim. Applicant therefore respectfully requests withdrawal of the rejection of claim 35; however, Applicant expressly reserves

the right to pursue any patentable subject matter included in claim 35 at a later time. Claims 36-40, 44-48, 61-66, 70-74, and 77 ultimately depend from claims 26 and 51 and are therefore allowable for at least the same reasons. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 36-40, 44-48, 61-66, 70-74, and 77.

Paragraph 8 of the Action rejects claims 53 and 55 under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Syeda-Mahmood in further view of Appleby (U.S. Patent Publication No. US2005/0015240 A1). Claims 53 and 55 ultimately depend from claims 26 and 51 and are therefore allowable for at least the same reasons. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 53 and 55.

CONCLUSION

Based on the above amendments and remarks, Applicant believes that claims 26-31, 36-40, 43-57, 63-66, and 69-77 are in condition for allowance and such is respectfully requested. Applicant believes that no fees are necessitated by this amendment and response. The Commissioner is hereby authorized to charge any additional fees required by this response to our Deposit Account No. **502075**.

Respectfully submitted,

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